

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

POLAROID CORPORATION)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-738 (SLR)
)	
HEWLETT-PACKARD COMPANY,)	REDACTED -
)	PUBLIC VERSION
Defendant.)	

**APPENDIX TO POLAROID'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT UNDER 35 U.S.C. § 287**

OF COUNSEL:

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Original Filing Date: June 16, 2008

Redacted Filing Date: June 20, 2008

INDEX

Ex. 1	D. Schonfeld Deposition Transcript
Ex. 2	P. Agouris Deposition Transcript
Ex. 3	J. Thornton Deposition Transcript
Ex. 4	J. Bullitt Deposition Transcript
Ex. 5	August 31, 2007 Letter From A. Duerr to M. Bernstein
Ex. 6	October 1, 2007 Letter From C. Beasley to M. Bernstein
Ex. 7	November 16, 2007 Letter from M. Skinner to B. Coburn
Ex. 8	Polaroid Corporation's Response to Hewlett Packard Co.'s First Request For Production Of Documents And Things
Ex. 9	Polaroid Corporation's Response to Hewlett-Packard Company's Second Set of Requests For Production of Documents To Polaroid Corporation
Ex. 10	Polaroid Corporation's Response to Hewlett-Packard Company's Third Set of Requests For Production of Documents To Polaroid Corporation
Ex. 11	Hewlett-Packard Company's First Set of Interrogatories To Polaroid Corporation
Ex. 12	Polaroid Corporation's Response to Hewlett-Packard Co.'s First Set of Interrogatories
Ex. 13	September 24, 2007 Letter from D. Higer to B. Coburn
Ex. 14	October 23, 2007 Letter From D. Higer to B. Coburn
Ex. 15	November 30, 2007 Letter from D. Higer to B. Coburn
Ex. 16	December 8, 2007 Letter from D. Higer to B. Coburn

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on June 20, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

William J. Marsden, Jr.
FISH & RICHARDSON P.C.

I also certify that copies were caused to be served on June 20, 2008 upon the following in the manner indicated:

BY E-MAIL

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Boston, MA 02110

/s/ Julia Heaney

Julia Heaney (#3052)

EXHIBIT 1

REDACTED

EXHIBIT 2

REDACTED

EXHIBIT 3

REDACTED

EXHIBIT 4

REDACTED

EXHIBIT 5

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August 31, 2007

BY FEDERAL EXPRESS

Matthew Bernstein
Fish & Richardson
12390 El Camino Real
San Diego, CA 92310

Re: Polaroid v. HP; C.A. No. 06-738

Dear Mr. Bernstein:

Enclosed please find Polaroid production documents bearing bates numbers POL 0878288 - 2577964 and POL 3262180 - 7262522. Please contact me if you have any questions.

Sincerely,



Adam J. Duerr
Project Assistant

AJD

Enclosures

EXHIBIT 6

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October 1, 2007

VIA FEDERAL EXPRESS

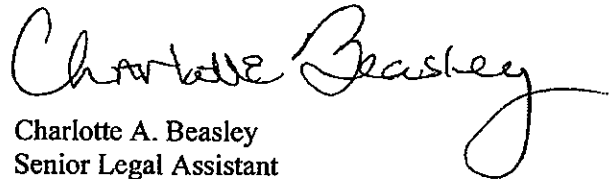
Matthew Bernstein
Fish & Richardson
12390 El Camino Real
San Diego, CA 92310

Re: Polaroid v. HP

Dear Mr. Bernstein:

Enclosed please find Polaroid document production bearing Bates range POL 7494488 - POL 7494934, POL 7494935 - POL 7495975, and POL 7495976 - POL 7504683. If you have any questions, please call me.

Sincerely,


Charlotte A. Beasley
Senior Legal Assistant

CAB/nes

EXHIBIT 7

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November 16, 2007

VIA EMAIL

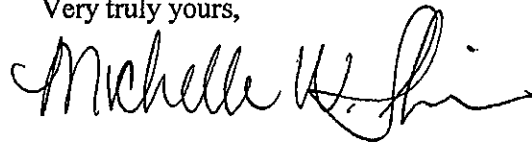
Bradley D. Coburn, Esq.
Fish & Richardson, P.C.
111 Congress Avenue, Suite 810
Austin, TX 78701

Re: *Polaroid Corporation v. Hewlett Packard Company*
USDC-D. Del.-C.A. No. 06-738 (SLR)

Dear Bradley:

I write in response to your letters of November 12 and 15, 2007 concerning the identification of source code in Polaroid's production. The Bates ranges for the source code that Polaroid produced is POL 7381946-7484929, 7492888-3139; and 7501367-7520483.

Very truly yours,



Michelle W. Skinner

MWS

cc: William M. Boyd, Esq.
Jack B. Blumenfeld, Esq.

EXHIBIT 8

REDACTED

EXHIBIT 9

REDACTED

EXHIBIT 10

REDACTED

EXHIBIT 11

REDACTED

EXHIBIT 12

REDACTED

EXHIBIT 13

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September 24, 2007

VIA EMAIL

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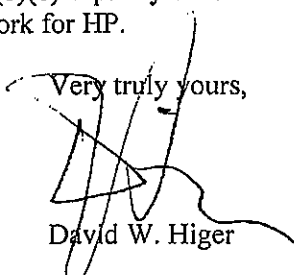
Re: *Polaroid Corporation v. Hewlett Packard Company*
USDC-D. Del.-C.A. No. 06-738 (SLR)

Dear Mr. Coburn:

I write in response to your September 21, 2007 letter canceling the deposition of Julian Bullitt in his individual and 30(b)(6) capacity one business day before the scheduled date of the deposition. Although HP attempts to lay the blame for this cancellation on Polaroid's production of documents, Polaroid told HP on September 14, 2007 during the parties' meet and confer that in light of agreements reached during the meet and confer Polaroid would produce 200,000 pages of additional documents potentially relevant to Mr. Bullitt's deposition. And, despite Polaroid specifically asking whether HP intended to go forward with Mr. Bullitt's September 25th deposition in light of this additional production, HP gave no indication that it intended to cancel the deposition. In addition, HP misleadingly states that it is "Polaroid's stated position that a witness will not be produced at different times" when, in fact, you took that specific position on September 17, 2007 in your e-mail regarding Ms. Dogan's deposition.

Because HP has unilaterally cancelled Mr. Bullitt's deposition, Mr. Bullitt is available to be deposed in his individual and 30(b)(6) capacity on October 23, 2007. Please confirm as soon as possible that this date will work for HP.

Very truly yours,



David W. Higer

DWH

cc: William M. Boyd, Esq.
Jack B. Blumenfeld, Esq.

EXHIBIT 14

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October 23, 2007

VIA EMAIL

Bradley D. Coburn, Esq.
Fish & Richardson, P.C.
111 Congress Avenue, Suite 810
Austin, TX 78701

Re: *Polaroid Corporation v. Hewlett Packard Company*
USDC-D. Del.-C.A. No. 06-738 (SLR)

Dear Mr. Coburn:

I write in response to HP's October 15, 2007 letter, yet again, canceling the personal and 30(b)(6) deposition of Julian Bullitt. This is the second time that Mr. Bullitt has coordinated his schedule in an attempt to provide a date to HP on which he may be deposed. And, it is the second time that HP has cancelled Mr. Bullitt's deposition with very little notice. Indeed, the first time HP cancelled Mr. Bullitt's deposition, it did so a mere one business day before the deposition was scheduled. *See* September 24, 2007 Higer Letter to Coburn. In this instance, HP was aware of Mr. Bullitt's October 23, 2007 availability as of September 24, 2007. *Id.* Yet, inexplicably, and despite my October 11, 2007 follow-up letter, HP waited until October 15th to advise that an alleged intervening conflict prevented the deposition from going forward on October 23rd.

HP's conduct, unilaterally canceling depositions or reneging on dates for depositions it proposed, is not unique to Mr. Bullitt. Indeed, HP's conduct evidences a continued pattern and practice of discovery abuse that unnecessarily and further increases the costs of this litigation. HP has similarly cancelled the depositions of Donald Levinstone and Edward Roman. September 5, 2007 Higer Letter to Coburn. And, despite three letters proposing that Polaroid make three witnesses available for five depositions the week of November 5 or November 12, 2007, when Polaroid had — through great effort — accommodated HP's request and scheduled depositions during the week of November 12th, HP cancelled these depositions. *See* September 21, 2007 Coburn Letter to Meginnes (proposing deposition dates); September 28, 2007 Coburn Letter to Meginnes (confirming HP's desire and availability to proceed with deposition dates); October 5, 2007 Coburn Letter to Meginnes (same); October 8, 2007 Meginnes Letter to Coburn (accepting deposition dates the week of November 12, 2007); October 15, 2007 Coburn Letter to Meginnes (reneging on HP's availability). And, HP's cancellation of these depositions during the week of November 12th occurred less than a week after HP had confirmed — for the third time — its willingness and availability to go forward with depositions during that time.

Bradley D. Coburn, Esq.
October 23, 2007
Page 2

Given HP's improper conduct with respect to deposition scheduling, please confirm that HP is actually available and willing to proceed with Mr. Bullitt's personal and 30(b)(6) deposition on each of the days in the November 21-23, 2007 proposal made in your October 15 letter. Once HP has confirmed these dates, Polaroid will advise HP as to Mr. Bullitt's availability.

Very truly yours,



David W. Higer

DWH

cc: William M. Boyd, Esq.
Jack B. Blumenfeld, Esq.

EXHIBIT 15

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November 30, 2007

VIA EMAIL

Bradley D. Coburn, Esq.
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Austin, TX 78701

Re: *Polaroid Corporation v. Hewlett Packard Company*
USDC-D. Del.-C.A. No. 06-738 (SLR)

Dear Mr. Coburn:

I write in response to HP's November 20, 2007 letter unilaterally canceling the personal and 30(b)(6) deposition of Julian Bullitt for the third time. Although HP states that the cancellation is due to allegedly missing source code, HP's explanation is flawed. Indeed, on November 19th, HP had finally acknowledged that it wanted to go forward with Mr. Bullitt's deposition on November 27th. *See* November 19, 2007 Coburn Letter to Higer. Certainly, HP did not learn of allegedly missing source code between the time of its November 19th and 20th letters. Instead, HP's conduct is another example of its ongoing pattern and practice of discovery abuse that unnecessarily and further increases the costs of this litigation. Indeed, not only does HP continue to unjustifiably and unilaterally cancel depositions, but HP waits an improper period of time to confirm that it will go forward with depositions.

By way of example, Polaroid offered November 27th as the date for Mr. Bullitt's depositions on October 25th. *See* October 25, 2007 Higer Email to Coburn (providing alternative date to Thanksgiving dates proposed by HP). Inexplicably, HP waited until its November 19th letter to confirm this date — a delay of 25 days. And, again, after this excessive delay HP unilaterally cancelled the deposition the next day. By contrast, HP waited a mere seven days to unilaterally retract the deposition date it had offered for Anand Srinivasan. *See* November 13, 2007 and November 20, 2007 Emails from Coburn to Higer.

By way of an additional example, HP failed to even respond to the offered date of November 29, 2007 for the 30(b)(6) deposition of Guy Maccarone. This, despite the fact that the date was offered on November 5th. *See* November 5, 2007 Higer Email to Coburn. Instead, HP said nothing for 24 days and simply allowed the offered date to pass.

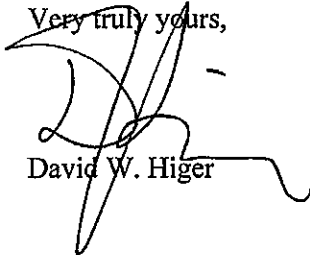
The above examples are illustrative only and by no means an exhaustive list of HP's improper discovery practices. *See, e.g.,* October 23, 2007 Higer Letter to Coburn. Notwithstanding HP's continued and unjustifiable gamesmanship, Polaroid will make Mr.

Bradley D. Coburn, Esq.
November 30, 2007
Page 2

Bullitt available for deposition on December 18, 2007 from 11 AM until 6 PM and on December 19, 2007 commencing at 8:30 AM. This expanded period for deposition should alleviate any concerns expressed in your November 19th letter. Please confirm these dates or propose alternative dates within seven days.

Polaroid is in receipt of, and is currently preparing a response to, HP's 30(b)(6) regarding Adaptive Digital Gamma Correction. In addition to the 30(b)(6) topics for which Mr. Bullitt has previously been offered, Polaroid anticipates that Mr. Bullitt will be Polaroid's designee for any topics for which Polaroid agrees to provide a witness regarding this 30(b)(6) deposition.

Very truly yours,



David W. Higer

DWH

cc: William M. Boyd, Esq.
Jack B. Blumenfeld, Esq.

EXHIBIT 16

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December 8, 2007

VIA EMAIL

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Austin, TX 78701

Re: *Polaroid Corporation v. Hewlett Packard Company*
USDC-D. Del.-C.A. No. 06-738 (SLR)

Dear Mr. Coburn:

I write in response to your December 6, 2007 letter. HP's multiple cancellations of Mr. Bullitt's deposition are not justified by alleged Polaroid production issues. Indeed, Polaroid has produced all source code that it could locate after a reasonable search and did so no later than October 18th. It is HP who has yet to complete its source code production.

Polaroid understands your statement that HP refuses to agree to dates for Mr. Bullitt's deposition as a refusal of the December 18th and 19th dates offered by Polaroid for Mr. Bullitt's deposition. Accordingly, when HP is willing to again discuss dates for Mr. Bullitt's deposition, please advise us of HP's availability in January.

As detailed in my November 30th letter, HP's conduct in failing to respond to offered deposition dates for over three weeks is improper. HP's unilateral retraction of the Srinivasan date after seven days does not change that fact. Regardless, Mr. Maccarone and his counsel will not be available for deposition on either December 20th or 21st. Please provide alternative dates for January 2008.

Very truly yours,



David W. Higer

DWH

cc: William M. Boyd, Esq.
Jack B. Blumenfeld, Esq.